

## Calendar No. 164

107TH CONGRESS  
1ST SESSION**S. 1439**

To provide and revise conditions and requirements for the ballistic missile defense programs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2001

Mr. LEVIN introduced the following bill; which was read the first time

SEPTEMBER 20, 2001

Read the second time and placed on the calendar

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**A BILL**

To provide and revise conditions and requirements for the ballistic missile defense programs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ballistic Missile De-  
5       fense Act of 2001”.

1 **SEC. 2. PRESIDENTIAL CERTIFICATION AND EXPEDITED**  
2 **CONGRESSIONAL APPROVAL PROCESS FOR**  
3 **CERTAIN USES OF BALLISTIC MISSILE DE-**  
4 **FENSE FUNDS.**

5 (a) LIMITATION.—No funds authorized to be appro-  
6 priated for ballistic missile defense under the National De-  
7 fense Authorization Act for Fiscal Year 2002 may be obli-  
8 gated or expended for any activity that would be incon-  
9 sistent with the requirements of the Anti-Ballistic Missile  
10 Treaty of 1972 (as in effect on August 1, 2001), as deter-  
11 mined by the President with the advice of the Secretary  
12 of State and the Secretary of Defense, unless—

13 (1) the ABM Treaty has been modified or su-  
14 perseded by a new strategic framework or other  
15 agreement in a manner that, as determined by the  
16 President with the advice of those officials, permits  
17 such activity; or

18 (2)(A) the President submits a certification to  
19 Congress in accordance with the requirements of  
20 subsection (b); and

21 (B) there is enacted a joint resolution specifi-  
22 cally authorizing the obligation or expenditure in ac-  
23 cordance with the expedited procedures specified in  
24 subsection (c).

1 (b) PRESIDENTIAL CERTIFICATION.—(1) A certifi-  
2 cation satisfies the requirements of this subsection if the  
3 certification states that—

4 (A) the President has endeavored in good faith  
5 and for a reasonable period to negotiate a new stra-  
6 tegic framework or other appropriate modification to  
7 the ABM Treaty, but has been unable to do so;

8 (B) further efforts to negotiate such framework  
9 or other modification are not likely to be successful  
10 within a reasonable period; and

11 (C) it is in the national security interest of the  
12 United States to conduct activities that would be in-  
13 consistent with the requirements of the ABM Trea-  
14 ty.

15 (2) The President shall submit to Congress, with a  
16 certification under subsection (a)(2)(A), a written state-  
17 ment that—

18 (A) sets forth the basis for the President's de-  
19 termination to certify the matters in the certification  
20 under subparagraphs (B) and (C) of paragraph (1);  
21 and

22 (B) specifies each activity for which the Presi-  
23 dent has determined that it is in the national inter-  
24 est to conduct with funds authorized to be appro-  
25 priated by the National Defense Authorization Act

1 for Fiscal Year 2002, notwithstanding the inconsis-  
 2 tency of the activity with the requirements of the  
 3 ABM Treaty.

4 (c) EXPEDITED APPROVAL PROCEDURES.—(1) A  
 5 joint resolution referred to in subparagraph (B) of sub-  
 6 section (a)(2) means only a joint resolution introduced  
 7 after the date on which a certification of the President  
 8 pursuant to subparagraph (A) of such subsection is re-  
 9 ceived by Congress—

10 (A) the title of which is as follows: “A joint res-  
 11 olution approving the expenditure of funds for activi-  
 12 ties proposed by the President on \_\_\_\_\_.”, the  
 13 blank space being filled in with the date on which  
 14 the President submitted the certification;

15 (B) which does not have a preamble; and

16 (C) the text of which only approves the activi-  
 17 ties specified by the President in the written state-  
 18 ment submitted with the certification pursuant to  
 19 subsection (b)(2)(B) by providing after the enacting  
 20 clause only the following: “That Congress approves  
 21 the expenditure of funds for activities proposed by  
 22 the President on \_\_\_\_\_, notwithstanding the in-  
 23 consistency of such activities with the requirements  
 24 of the Anti-Ballistic Missile Treaty of 1972.”, the

1 blank space being filled in with the date on which  
2 the President submitted the certification.

3 (2) A joint resolution described in paragraph (1) shall  
4 be considered in a House of Congress in accordance with  
5 the procedures applicable to joint resolutions under para-  
6 graphs (3) through (8) of section 8066(c) of the Depart-  
7 ment of Defense Appropriations Act, 1985 (as contained  
8 in section 101(h) of Public Law 98–473; 98 Stat. 1936),  
9 except that—

10 (A) the committee to which the joint resolution  
11 is referred under this paragraph in the Senate shall  
12 be the Committee on Armed Services of the Senate,  
13 and the committee to which the joint resolution is  
14 referred under this paragraph in the House of Rep-  
15 resentatives shall be the Committee on Armed Serv-  
16 ices of the House of Representatives; and

17 (B) the limitation on total time for debate  
18 under section 8066(c)(5)(B) of the Department of  
19 Defense Appropriations Act, 1985, as applied to a  
20 joint resolution under this paragraph, shall be 20  
21 hours instead of 10 hours.

22 (d) RELATIONSHIP TO ABM TREATY.—Nothing in  
23 this section shall be construed—

24 (1) to limit the authority of the United States  
25 to withdraw from the ABM Treaty at any time upon

1 a decision for the United States that extraordinary  
 2 events related to the subject matter of the Treaty  
 3 have jeopardized its supreme interests in accordance  
 4 with Article XV of the Treaty; or

5 (2) to authorize any obligation or expenditure  
 6 of funds for activities that would be inconsistent  
 7 with the requirements of the ABM Treaty, if the  
 8 United States has not withdrawn from the Treaty in  
 9 accordance with Article XV of the Treaty.

10 (e) ABM TREATY DEFINED.—In this section, the  
 11 terms “Anti-Ballistic Missile Treaty of 1972” and “ABM  
 12 Treaty” mean the Treaty Between the United States of  
 13 America and the Union of Soviet Socialist Republics on  
 14 the Limitation of Anti-Ballistic Missile Systems, signed at  
 15 Moscow on May 26, 1972, and includes the Protocol to  
 16 that treaty, signed at Moscow on July 3, 1974.

17 **SEC. 3. PROGRAM ELEMENTS AND PROCUREMENT BUDGET**

18 **DISPLAYS FOR BALLISTIC MISSILE DEFENSE**

19 **PROGRAMS.**

20 (a) PROGRAM ELEMENTS.—Section 223 of title 10,  
 21 United States Code, is amended—

22 (1) by redesignating subsections (b) and (c) as  
 23 subsections (d) and (e); and

24 (2) by striking subsection (a) and inserting the  
 25 following:

1       “(a) PROGRAM ELEMENTS SPECIFIED.—In the budg-  
 2 et justification materials submitted to Congress in support  
 3 of the Department of Defense budget for any fiscal year  
 4 (as submitted with the budget of the President under sec-  
 5 tion 1105(a) of title 31), the amount requested for activi-  
 6 ties of the Ballistic Missile Defense Organization shall be  
 7 set forth in accordance with the following program ele-  
 8 ments:

9               “(1) Ballistic Missile Defense system.

10              “(2) Terminal Defense segment.

11              “(3) Mid-Course Defense segment.

12              “(4) Boost Defense segment.

13              “(5) Sensors.

14              “(6) Technology.

15       “(b) ADDITIONAL INFORMATION REQUIRED.—(1)  
 16 Within each program element set forth in paragraphs (2)  
 17 through (5) of subsection (a), the budget justification ma-  
 18 terials submitted to Congress shall separately specify the  
 19 amounts requested for specific categories of systems, as  
 20 follows:

21              “(A) Land-based systems.

22              “(B) Sea-based systems.

23              “(C) Air-based systems.

24              “(D) Space-based systems.

1       “(2) Within the amounts specified pursuant to para-  
2 graph (1), the budget justification materials shall sepa-  
3 rately set forth amounts requested for established pro-  
4 grams, as follows:

5           “(A) Within the amount specified for land-  
6 based systems in the Terminal Defense segment, the  
7 materials shall set forth the amount requested for  
8 the Theater High-Altitude Area Defense system and  
9 the amount requested for the Arrow system.

10          “(B) Within the amount specified for sea-based  
11 systems in the Mid-Course Defense segment, the  
12 materials shall set forth the amount requested for  
13 the Navy Theater Wide system.

14          “(C) Within the amount specified for air-based  
15 systems in the Boost Defense segment, the materials  
16 shall set forth the amount requested for the Air-  
17 borne Laser system.

18          “(D) Within the amount specified for space-  
19 based systems in the Boost Defense segment, the  
20 materials shall set forth the amount requested for  
21 the Space-Based Laser system.

22          “(E) Within the amount specified for space-  
23 based systems in the Sensors segment, the materials  
24 shall set forth the amount requested for the Space-  
25 Based Infrared System Low Component and the



1 amount requested for the Russian American Obser-  
2 vation Satellites (RAMOS) system.

3 “(c) LIMITED AUTHORITY TO VARY INDIVIDUAL  
4 AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any  
5 case in which the Secretary of Defense determines that  
6 it is necessary to do so in the national interest, the Sec-  
7 retary may obligate amounts authorized to be appro-  
8 priated for an established program or class of systems de-  
9 scribed in subsection (b) in excess of the amount specifi-  
10 cally authorized for such program or class of systems.

11 “(2) An obligation of funds for a program or class  
12 of systems described in subsection (b) in excess of the spe-  
13 cific amount authorized for such program or class of sys-  
14 tems may be made under the authority of paragraph (1)  
15 only after—

16 “(A) the Secretary submits to Congress a noti-  
17 fication of the intent to do so together with a com-  
18 plete discussion of the justification for doing so; and

19 “(B) 15 days have elapsed following the date of  
20 the notification.

21 “(3) The Secretary may not, under the authority of  
22 paragraph (1)—

23 “(A) obligate an amount for any program or  
24 class of systems described in subsection (b) that is  
25 in excess of the lesser of—

1           “(i) the amount that is 115 percent of the  
2           amount specifically authorized for such pro-  
3           gram or class of systems; or

4           “(ii) the amount that is \$100,000,000  
5           more than the amount specifically authorized  
6           for such program or class of systems;

7           “(B) reduce the amount that is available for ob-  
8           ligation or expenditure for any such program or  
9           class of systems below the higher of—

10           “(i) the amount that is 85 percent of the  
11           amount specifically authorized for such pro-  
12           gram or class of systems; or

13           “(ii) the amount that is \$100,000,000 less  
14           than the amount specifically authorized for such  
15           program or class of systems; or

16           “(C) obligate amounts for any program element  
17           described in subsection (a) in excess of the amount  
18           specifically authorized for such program element.”.

19           (b) REPEAL OF PROCUREMENT BUDGET DISPLAY  
20 REQUIREMENT.—(1) Section 224 of such title is repealed.

21           (2) The table of sections at the beginning of chapter  
22 9 of such title is amended by striking the item relating  
23 to section 224.

1 **SEC. 4. BALLISTIC MISSILE DEFENSE RESEARCH AND DE-**  
2 **VELOPMENT PROGRAM BASELINE DOCU-**  
3 **MENT.**

4 (a) REQUIREMENT FOR BASELINE DOCUMENT.—Not  
5 later than February 1, 2002, the Secretary of Defense  
6 shall submit to the congressional defense committees a  
7 baseline document for the ballistic missile defense research  
8 and development program through the period covered by  
9 the future-years defense program that is submitted to  
10 Congress that year under section 221 of title 10, United  
11 States Code.

12 (b) CONTENTS OF BASELINE DOCUMENT.—The  
13 baseline document required by subsection (a) shall, at a  
14 minimum, include the following matters:

15 (1) A statement of the objectives of the ballistic  
16 missile defense research and development program,  
17 including, at a minimum, a specification of—

18 (A) the country or countries the program  
19 is intended to protect;

20 (B) the type or types of missile threat the  
21 program is intended to protect against, includ-  
22 ing the number of ballistic missiles and types of  
23 countermeasures to be addressed; and

24 (C) the level of success and degree of con-  
25 fidence that are the intended standards for de-

1           termining whether and when the objectives are  
2           achieved.

3           (2) For each established program and each  
4           class of systems identified under section 223(b) of  
5           title 10, United States Code—

6                   (A) each major technology to be pursued;  
7           and

8                   (B) an explanation of how each such tech-  
9           nology relates to the objectives of the ballistic  
10          missile defense research and development pro-  
11          gram.

12          (3) For each technology identified pursuant to  
13          paragraph (2)(A)—

14                   (A) a technical baseline that identifies re-  
15          search and development objectives and program  
16          requirements for the technology;

17                   (B) a schedule baseline for the period cov-  
18          ered by the baseline document, including the  
19          specific key program milestones and when the  
20          program is expected to achieve each milestone;

21                   (C) a cost baseline that includes estimates  
22          of the total life-cycle costs and specifies for  
23          each year of such period the costs for research  
24          and development of the technology; and

1 (D) a testing baseline for such period that  
2 specifies—

- 3 (i) key test events for the program;  
4 (ii) when the tests are to be con-  
5 ducted;  
6 (iii) the purposes of the tests; and  
7 (iv) whether the tests are expected to  
8 conflict with existing United States obliga-  
9 tions under international law.

10 (c) CONSULTATION REQUIREMENTS.—In developing  
11 the baseline document required by subsection (a), the Sec-  
12 retary shall ensure that—

13 (1) the technical baseline required by subsection  
14 (b)(3)(A) is developed in consultation with the Joint  
15 Requirements Oversight Council and the Director of  
16 Program Analysis and Evaluation of the Depart-  
17 ment of Defense;

18 (2) the schedule baseline required by subsection  
19 (b)(3)(B) is developed in consultation with the  
20 Under Secretary of Defense for Acquisition, Tech-  
21 nology, and Logistics and the Director of Program  
22 Analysis and Evaluation of the Department of De-  
23 fense;

24 (3) the cost baseline required by subsection  
25 (b)(3)(C) is developed in consultation with the Cost

1 Analysis and Improvement Group of the Department  
2 of Defense; and

3 (4) the testing baseline required by subsection  
4 (b)(3)(D) is developed in consultation with the Di-  
5 rector of Operational Testing and Evaluation and  
6 the Treaty Compliance Review Group of the Depart-  
7 ment of Defense.

8 (d) ANNUAL UPDATES TO BASELINE DOCUMENT.—  
9 Beginning in 2003 and ending with 2010, the Secretary  
10 shall—

11 (1) update the baseline document each year to  
12 cover the period covered by the future-years defense  
13 program that is submitted to Congress that year  
14 under section 221 of title 10, United States Code;  
15 and

16 (2) submit the updated baseline document to  
17 the congressional defense committees not later than  
18 February 1 of that year.

19 **SEC. 5. ANNUAL PROGRAM PLAN FOR BALLISTIC MISSILE**  
20 **DEFENSE RESEARCH AND DEVELOPMENT**  
21 **PROGRAM.**

22 (a) REQUIREMENT FOR ANNUAL PROGRAM PLAN.—  
23 With the submission of the program baseline document,  
24 and with each annual update of the program baseline doc-  
25 ument, required under section 223, the Secretary shall

1 submit to the congressional defense committees each year  
2 a program of activities planned to be carried out during  
3 the fiscal year in which submitted and the two fiscal years  
4 following such fiscal year.

5 (b) CONTENT OF ANNUAL PROGRAM PLAN.—Each  
6 program plan required by subsection (a) shall include, at  
7 a minimum, the following matters:

8 (1) A funding profile that includes, for each  
9 major technology identified in the program baseline  
10 document, an estimate of—

11 (A) the total expenditures to be made in  
12 each fiscal year covered by the program plan;

13 (B) the expenditures to be made for each  
14 procurement or military construction activity to  
15 be conducted in such period;

16 (C) the expenditures to be made for each  
17 ballistic missile defense flight test to be con-  
18 ducted in such period;

19 (D) the expenditures to be made for each  
20 other test activity to be conducted in such pe-  
21 riod; and

22 (E) the expenditures to be made for each  
23 research and development activity to be con-  
24 ducted in such period.

1           (2) A program schedule that identifies, for each  
2           major technology identified in the program baseline  
3           document—

4                   (A) the planned schedule for each procure-  
5                   ment or military construction activity to be con-  
6                   ducted during the period covered by the pro-  
7                   gram plan;

8                   (B) the planned date of each ballistic mis-  
9                   sile defense flight test to be conducted in such  
10                  period;

11                  (C) the planned schedule for each other  
12                  test activity to be conducted in such period; and

13                  (D) the planned schedule for each research  
14                  and development activity to be conducted in  
15                  such period.

16           (3) A legal compliance plan that includes a pre-  
17           liminary assessment by the Treaty Compliance Re-  
18           view Group of the Department of Defense regarding  
19           whether each expenditure included in the funding  
20           profile and each activity included in the schedule is  
21           likely to be consistent with existing United States  
22           obligations under international law.

23           (c) INTERIM PROGRAM PLAN.— Not later than 60  
24           days after the date of the enactment of this Act, the Sec-  
25           retary shall submit to the congressional defense commit-



tees an interim program plan covering planned program activities for fiscal years 2002 and 2003. The interim program plan shall contain the information required by subsection (b) for such fiscal years, and shall govern program activities until the Secretary submits the program baseline document and program plan that are required to be submitted on February 1, 2002.

(d) MODIFICATIONS.—The Secretary may modify a program plan submitted to the congressional defense committees pursuant to subsection (a) at any time. A modification to a program plan shall become effective 30 days after the date on which the congressional defense committees are notified of the modification. Each notification shall include a description of how the plan is to be modified and an explanation of the reasons for the modification.

(e) REQUIREMENT THAT OBLIGATIONS AND EXPENDITURES BE CONSISTENT WITH PROGRAM PLAN.—

(1) Not more than 25 percent of the funds authorized to be appropriated for ballistic missile defense research, development, test, and evaluation under section 201(4) of the National Defense Authorization Act for Fiscal Year 2002 may be obligated or expended before the date on which the interim program plan required by subsection (c) is submitted to the congressional defense committees.

1       (2) Not more than 50 percent of the funds authorized  
2 to be appropriated for ballistic missile defense research,  
3 development, test, and evaluation under section 201(4) of  
4 the National Defense Authorization Act for Fiscal Year  
5 2002 may be obligated or expended before the date on  
6 which the program baseline document required by section  
7 4 and the first program plan required by subsection (a)  
8 are submitted to the congressional defense committees.

9       (3) After the date on which the interim program plan  
10 required by subsection (c) is submitted to the congres-  
11 sional defense committees, none of the funds authorized  
12 to be appropriated for ballistic missile defense research,  
13 development, test, and evaluation may be obligated or ex-  
14 pended for an activity unless—

15           (A) the cost of the activity is specifically identi-  
16 fied in the funding profile included in an interim  
17 program plan, program plan, or modification to a  
18 program plan in accordance with subsection (b)(1);

19           (B) the date or schedule for the activity is spe-  
20 cifically identified in an interim program plan, pro-  
21 gram plan, or modification to a program plan in ac-  
22 cordance with subsection (b)(2);

23           (C) a preliminary assessment of the legal status  
24 of the activity is specifically included in an interim  
25 program plan, program plan, or modification to a

1 program plan in accordance with subsection (b)(3);  
2 and

3 (D) the interim program plan, program plan, or  
4 modification to a program plan has been submitted  
5 to the congressional defense committees and be-  
6 comes effective in accordance with the requirements  
7 of subsection (a), (c), or (d), respectively.

8 **SEC. 6. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.**

9 For purposes of this Act, the term “congressional de-  
10 fense committees” means—

11 (1) the Committee on Armed Services and the  
12 Committee on Appropriations of the Senate; and

13 (2) the Committee on Armed Services and the  
14 Committee on Appropriations of the House of Rep-  
15 resentatives.

**Calendar No. 164**

107TH CONGRESS  
1ST SESSION

**S. 1439**

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**A BILL**

To provide and revise conditions and requirements  
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SEPTEMBER 20, 2001

Read the second time and placed on the calendar